UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

| | |
|---|---|
| IN RE "A MILLION LITTLE PIECES" LITIGATION | No. 06-md-1771<br>Hon. Richard J. Holwell |

**AFFIDAVIT OF LARRY D. DRURY IN SUPPORT OF JOINT PETITION FOR ATTORNEYS' FEES AND REIMBURSEMENT OF COSTS FILED BY LARRY D. DRURY, LTD.**

STATE OF ILLINOIS )
) ss
COUNTY OF COOK )

LARRY D. DRURY, being first duly sworn, deposes and says:

1. I am a partner of the firm of Larry D. Drury, Ltd. I am submitting this affidavit in support of my firm's application for an award of attorneys' fees in connection with services rendered in the above-entitled action ("The Action") and the reimbursement of expenses incurred by my firm in the course of this litigation.

2. My firm acted as one of plaintiff's co-lead counsel in this class action.

3. The tasks undertaken by my firm can be summarized as follows: research regarding complaint, class certification, preliminary and final approval of the settlement; discovery/confirmatory discovery; drafting of pleadings; settlement negotiations; drafting and revision of preliminary and final approval settlement documents, travel, attendance and presentation of argument at preliminary approval hearing; communication with co-counsel regarding status of the proceedings.

Dockets.Justia.com

4. The chart attached hereto as Exhibit A is a detailed summary indicating the amount of time spent by the members of my firm who were involved in this litigation, and the lodestar calculation based upon my firm's current billing rates for such personnel in the final year of employment by my firm. As reflected therein, my firm expended a total of 332.50 hours on this litigation from the inception of the case to the present, with a total lodestar amount of $171,097.50.[1] Time expended in preparing this application for fees and reimbursement of expenses has not been included in this request. I anticipate the accumulation of additional time to attend and argue at the final approval hearing in November and for any post judgment proceedings.

5. The hourly rates for the partners in my firm included in Exhibit "A" are the same as the regular current rates charged for their services in non-contingent matters and/or which have been accepted and approved in other class action matters in this District.

6. The chart attached hereto as Exhibit "B" is my firm's itemization of unreimbursed expenses incurred in the total amount of $1,667.71 in connection with the prosecution of this litigation. I expect additional expenses with respect to my attendance at the final approval hearing in November.

7. The expenses incurred in this Action are reflected on the books and records of my firm. These books and records are prepared from expense vouchers, check records and other source materials and are an accurate record of the expenses incurred in connection with the prosecution of the litigation.

[1] The schedule was prepared from contemporaneous, daily time records regularly prepared and maintained by my firm, which are available for inspection upon request of the Court.

8. With respect to the standing of counsel in this case, attached hereto as Exhibit "C" is a brief biography of my firm and attorneys in my firm who were principally involved in this litigation.

I declare under penalty of perjury that the foregoing is true and correct. Executed on this 27th day of September, 2007.

LARRY D. DRURY

SWORN TO BEFORE ME
this 27 day of September 2007.

NOTARY PUBLIC

"OFFICIAL SEAL"
Michelle C Moses
Notary Public, State of Illinois
Commission Expires 1/25/2011

# EXHIBIT "A"

## IN RE "*A MILLION LITTLE PIECES*" LITIGATION 06-MD-1771

## BILLING

**FIRM NAME: LARRY D. DRURY, LTD.**

**REPORTING PERIOD: January 1, 2006 through September 27, 2007**

| ATTORNEY NAME | TOTAL HOURS | HOURLY RATE | TOTAL LODESTAR |
|---|---|---|---|
| Larry D. Drury | 290.90 | $550.00 | $159,995.00 |
| Ilan Chorowsky | 23.00 | $350.00 | $ 8,050.00 |
| Marlo Malicay | 9.70 | $200.00 | $ 1,940.00 |
| Michelle C. Moses | 8.90 | $125.00 | $ 1,112.50 |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| **TOTAL** | 332.50 | N/A | $171,097.50 |

**EXHIBIT "B"**

**IN RE "*A MILLION LITTLE PIECES*" LITIGATION 06-MD-1771**

**EXPENSES**

**FIRM NAME: LARRY D. DRURY, LTD.**

**REPORTING PERIOD: January 1, 2006 through September 27, 2007**

| TYPE OF EXPENSE | CUMULATIVE TOTAL |
|---|---|
| Computerized Legal Research (Westlaw, Lexis, Dialog, etc.) | $ 15.08 |
| Court Cost & Filing Fees | $ 435.40 |
| Court Reporters & Transcripts | $ |
| Photocopying | $ 250.00 |
| Postage, Messenger & Express Mail, FedEx | $ 41.31 |
| Professional Services (Experts, Investigators, etc.) | $ |
| Telephone & Fax | $ |
| Travel, Hotels, Meals | $ 925.92 |
| Miscellaneous | $ |
| **TOTAL** | $ 1667.71 |

# LARRY D. DRURY, LTD.

Attorneys at Law
205 West Randolph, Suite 1430
Chicago, Illinois 60606
312/346-7950
312/346-5777 (fax)

Founded in 1980, Larry D. Drury, Ltd. is a civil litigation firm with a wide ranging litigation practice. The Firm primarily represents Plaintiffs, such as consumers, businesses, investors and employees in class action litigation.

## ATTORNEYS

**LARRY D. DRURY** founder of Larry D. Drury, Ltd. graduated from the University of Illinois in 1966 (B.S. Economics) and John Marshall Law School in 1969 (J.D. Law). He is admitted to practice in the Illinois Supreme Court, United States Supreme Court, United States Court of Appeals (7th Circuit), and United States District Court for the Northern District of Illinois and is a member of the Illinois Bar Association. Further, Mr. Drury has been admitted *pro hac vice* in numerous venues nationwide. Mr. Drury is a practicing experienced civil and criminal trial attorney with a multitude of jury and bench trials. Mr. Drury has argued before the Illinois Supreme Court, Illinois Appellate Court, United States Court of Appeals, Illinois Commerce Commission, and the Illinois Court of Claims, and was one of Plaintiffs' counsel in an appeal before the United States Supreme Court. Early in his career Mr. Drury acted as a Village of Norridge, Illinois Assistant Prosecutor and, more recently in 2003 began working as an Adjunct Professor at the John Marshall Law School in Chicago, Illinois and sits on the John Marshall Law School Alumni Association Board of Directors. Mr. Drury has, for many years, acted as an Illinois State Board of Education Hearing Officer for Teacher Dismissal Hearings and Special Education, as well as an arbitrator for Cook County Arbitration and AAA. He has been published in *Lane's Trial Practice* - "Cross Examination for Class Certification", has lectured before the Chicago Bar Association, Decalogue Society of Lawyers and the Illinois General Assembly, and has been a speaker on the radio on class action litigation. He has appeared on numerous television cable shows on class actions and has made a television appearance in New York on Banking Law and Class Actions. In 2000 Mr. Drury was a candidate for the Illinois Supreme Court and was rated "Well Qualified" by the Illinois State Bar Association (The Alliance of Bar Associations for Judicial Screening includes ten local Bar Associations) and rated "Recommended" by the Cook County Bar Association. He was endorsed by the Illinois Federation of Teachers, Illinois NOW Political Action Committee, IVI-IPO (Independent Voters of Illinois Independent precinct Organization), SEIU (Service Employees Union), Personal PAC, the Italian American Political Coalition and the Decalogue Society of Lawyers. Mr. Drury has argued many high profile cases that have received extensive media attention. His primary area of practice is state and federal consumer class actions where he has been appointed as lead or class counsel. Mr. Drury has also tried numerous injunction, contract, tort, and criminal felony and misdemeanor cases. Mr. Drury successfully litigated and argued *Steinberg v. Chicago Medical*

Exhibit C

*School*, 41 Ill.App.3d 804 (1976), 69 Ill.2d 320 (1977), before the Illinois Supreme Court, which is the seminal case under the Illinois class action statute.

**ILAN CHOROWSKY** is a 1996 graduate of the University of Wisconsin Law School. Mr. Chorowsky has concentrated his practice in multi-state class action litigation of consumer, anti-trust and contract claims in federal and state court venues across the country since 2000. Mr. Chorowsky has served as counsel in numerous class actions including class actions brought against Yahoo!, Lycos, Inc., Cole Taylor Bank, J.M. Smucker Co., United Postal Service (UPS), Behr Process Corp. and Masco Corp., the Village of Northbrook, Illinois, the *Chicago Sun Times* and in the *In Re Vitamins Antitrust Litigation*. Mr. Chorowsky also has represented plaintiffs and Indian tribes in commercial and other civil litigation since 1999. Mr. Chorowsky joined the Firm in 2003 and presently serves as president of the Chicago Chapter of the Wisconsin Bar Association. He has served on the Board of Directors for the Wisconsin Bar Public Interest Law section and has lectured at the John Marshall School of Law, the University of Wisconsin-Madison Schools of Law and of Medicine and the Wisconsin State Bar Convention.

Prior to practicing law, Mr. Chorowsky clerked for the Wisconsin Department of Justice Civil Litigation Unit and was employed by *The Washington Post* as a researcher for the Smithsonian Institute Woodrow Wilson Center for Scholars.

Mr. Chorowsky presently represents indigent clients in civil litigation, *pro bono*, in conjunction with the Legal Assistance Foundation of Metropolitan Chicago.

**JAMES ROWE** is the most recent attorney joining the firm and is actively engaged in pending class action matters. He is a graduate of DePaul University (B.A. 2000 Pre-Law and Economics and Business) and DePaul University College of Law (J.D. 2003). Mr. Rowe has experience in managing his own law firm and has worked as a contract attorney where he has gained extensive litigation experience in both state and federal courts and in arbitration and mediation proceedings. Mr. Rowe was an Assistant States Attorney in the Civil and Criminal Divisions for the Cook County State's Attorneys' Office where he was a lead attorney in a unit in the Child Protection Division where he used his research and trial skills to prosecute individuals who committed crimes against children. Mr. Rowe also has extensive deposition and discovery experience and has handled personal injury and medical malpractice claims.

Mr. Rowe has lectured as follows:

* Franklin Park Senior Citizens' Board on Elder Planning
*Cook County State's Attorneys' Office on "Preparing your Expert Witness for Trial"
*48th Floor Corporation on "Changes in Medical Malpractice Law"

Mr. Rowe's professional involvements include the following:

*Partner, EspanolChicago.com.LLC
*Elected Trustee, District 84 Public School Board

*Founder, Saving A Childhood Foundation
*Chairman, The Miracle Center Charter School Initiative
*Member, Lawyers Club of Chicago
*Guest Lecturer, Dominican University, River Forest, Illinois

## PARAPROFESSIONAL

**MICHELLE C. MOSES** joined the Firm in 1995 and has 28 years of experience in both state and federal courts working in general litigation firms. She has excellent research and organizational skills. Mrs. Moses has experience in drafting correspondence, assists in the drafting of pleadings, discovery and discovery responses, motions, orders and corporate document preparation. She has experience in document preparation for real estate closings, accumulation and review of medical records for personal injury cases and preparation of deposition abstracts. Mrs. Moses is responsible for accurately keeping attorney time records and works extensively with clients in the interview and investigation process. She also works with and directs the Firm's secretarial and law clerk staff.

Mrs. Moses has worked as a Board of Education Secretary being elected in 2001. In that regard she has attended many leadership programs, workshops and seminars, and has been recognized by the Illinois Association of School Boards. She has gained skills in hiring practices, contract terms and negotiation, administration, school construction, creation of education foundations, student scholarships, alternative funding and programs. She has also been actively involved in pursuing education legislation. Mrs. Moses presently sits as President of a homeowners association working with local government, management companies, vendors and attorneys leading governance in her local community.

## CASES

The Firm's expertise and commitment as lead counsel or class counsel in federal and state nationwide and state wide class litigation and settlements is illustrated by the numerous cases it has handled over the years, some of which are detailed below and have resulted in millions of dollars in class member relief.

1. *Schwab v. America Online, Inc.* Case No. 96 CH 13732. Class Counsel and Co-Chair. This highly publicized litigation dealt with the representations of unlimited access to AOL for $19.95/month and the problems that ensued in conjunction therewith. In the face of what was ultimately one hundred class actions filed nationwide, I was involved in the organization of over 50 law firms, setting up the co-chairmanship and the Executive Committee, which brought order and resolution to the litigation. The settlement was approved and resulted in a multi-million dollar benefit to the Class.

2. *In re Chicago Flood Litigation*, Case No. 92 L 5422. 176 Ill.2d 179; 680 N.E.2d 265 (1997) Sup.Ct. Docket Nos. 80460 and 80535 Cons. Class Counsel and a member of the

Executive Committee in the case involving the tunnel breach under the Chicago River in the downtown area of Chicago. Recovery of damages and property loss. Admiralty issues were heard before the United States Supreme Court. The firm acted as class counsel for a nationwide class settlement resulting in multi-million dollar relief.

3. *Orrick v. Sonic Communications*, Case No. 95 CH 3567. This litigation, as well as others against the Defendant, resulted from the practice known as "slamming". The private actions and actions filed on behalf of various Attorneys General were consolidated. A settlement providing benefits of approximately $8.3 million dollars was achieved; the settlement covered all pending cases. The firm acted as co-lead counsel. This litigation is believed to be the first class certification and class settlement on the practice known as slamming.

4. *Siegel v. Syncronys*, Case No. 95 CH 12257. The firm was co-lead counsel in this nationwide class action concerning an allegedly defective computer product. The matter was settled, resulting in a remedy for the Class which provided for 100% reimbursement of monies spent for the product. The settlement value was estimated at $22 million dollars.

5. *Steinberg v. Chicago Medical School*, 41 Ill.App.3d 804 (1976); 69 Ill.2d 320 (1977). This case involved breach of contract, consumer fraud and declaratory judgment concerning medical school admissions practices and criteria based upon the ability to pay rather than academic credentials. The firm acted as lead counsel and secured a nation wide settlement achieving several million dollars in relief. This case is a seminal case under Illinois class action law.

6. *In Re Chicago Sun Times Circulation Litigation*, Case No. 04 CH 9757. This case involved the misrepresentation of circulation distribution of the newspaper in setting advertising rates. The firm served on the Executive Committee and sat as a Co-Chair on attorneys' fee allocation committee. Class relief was established in the amount of $32 million dollars with a $5,000,000.00 cy pres fund for underprivileged organizations and charities..

7. *Spratt v. City of Wheaton, et al.* - Case No. 2004 L 000792
*O'Russa v. City of Peoria* - Case No. 05 CH 20
*Bourzak v. City of East Peoria* - Case No. 05 CH 11
*Siegel v. Village of Northbrook* - Case No. 02 CH 1901
*Sargent v. City of Carbondale* - Case No. 05 MR-1
The above cases litigated the refund of the Illinois statutory infrastructure maintenance fees imposed upon users of wireless and landline telephone service after a successful constitutional challenge. The firm served as lead counsel in each case and settlement funds were established in excess of $8 million dollars.

8. *Siegel v. Arista et al.*, Case No. 90 CH 11439. Litigation regarding consumer fraud and deceptive practices by award winning singers, Milli Vanilli, and the record company,

Arista, as to lip syncing and masking of their music. A multi-million dollar nationwide settlement was approved and provided the class with nationwide cash refunds.

9. *In Re Commonwealth Edison 1999 Summer Power Outages* - Consolidated Actions No. 99 CH 11626, No. 99 CH 11954 and No. 99 CH 12339. Consumer class litigating negligence, statutory breach and injunctive relief concerning deteriorated electrical equipment causing mass power outages. A state wide class was certified resulting in excess of $7.75 million dollars in consumer relief.

10. *In Re Pentium Computer Chip Litigation.* The firm served on the Executive Committee in this early computer litigation dealing with consumer rights when there was an inherent defect in chip speed and function. The consumers had the right to receive a replacement chip and recover damages which resulted in $200 million dollar class relief.

11. *Langendorf v. Irving Trust*, 244 Ill.App.3d 70 (1992). The firm was lead counsel in challenging the termination and unilateral change of interest rates on money market accounts and certificates of deposit. The settlement achieved nationwide class relief of millions of dollars in refunds and other bank product benefits.

12. *Stone v. Mardoian*, 83 Ill.App.3d 188 (1980). Successful challenge to fees imposed by the Clerk of the Circuit Court of Lake County, Illinois. The firm was lead counsel and achieved substantial monetary and remedial relief for the class.

13. *Rosenbloom v. Chicago Motor Club* (No. 1-97-3359) The firm was lead counsel and litigated the elimination of services provided for in the contract. The settlement provided hundreds of thousands of dollars in refunds to a nationwide class.

14. *In re Mercury Class Action Litigation.* Case No. 00 CH 13226 (Cir. Court of Cook County, Illinois). I served as Co-Lead Class Counsel in this case that pursued consumers' remedies regarding the location of mercury-containing gas regulators in and on real estate. This class was a regional one. The settlement, which has been approved, provides for medical monitoring, removal of the regulators, and cash compensation to certain of the class members.

15. *In re Bridgestone/Firestone Litigation.* This firm acted as Plaintiff's counsel in this product liability case regarding defective tires. There was a multi-million dollar nationwide class recovery for consumers.

16. *LaSalle Bank/Cole Taylor Bank* The firm was lead counsel in litigating bank "float" and failure to refund bank fees and charges. The settlement resulted in nationwide class recovery of several million dollars of disputed fees and charges, and a reduction of the "hold" time on checks.

17. *Breast Implant Litigation.* The firm acted as Plaintiff's counsel in this product liability case regarding defective breast implants. There was a multi-million dollar nationwide

class recovery to consumers, as well as remedial class relief concerning future medical injuries and surgery.

18. *In re McDonalds Corporation*. Case No. 01 CH 13803 (Cir. Ct. of Cook County, Illinois). The firm was co-lead counsel in this national class litigation and coordinated the efforts of approximately 25 plaintiffs' firms. The litigation concerned certain promotional games and arose from fraudulent removal of winning game pieces from random public distribution. The settlement of this case is valued at approximately $20 million dollars, which included fifteen $1 million dollar prizes given away by McDonalds.

19. *Christman v. Brauvin Realty Advisors, Inc.* (No. 96 C 6025) This case was a breach of contract, fraud and breach of fiduciary duty case concerning real estate investments. Larry D. Drury was one of the lead counsel responsible for obtaining over $10 million dollars in nationwide class relief.

20. *In Re Synthroid.* Consumer Fraud concerning the marketing of Synthroid. The firm was Plaintiff's counsel. A multi-million dollar nationwide settlement was achieved.

21. *In Re Salmonella* Products Liability and negligence case. Plaintiff's counsel and Executive Committee for full recovery for all class members concerning the medical condition of salmonella. 410,00,000 injury and damages. $25,000,000 class benefit.

22. *Napoli v. Illinois Guaranty Fund* (Circuit Ct. of Cook County, Illinois). Breach of contract and Illinois statutes concerning a bankrupt insurance company. Larry D. Drury acted as lead counsel and achieved a multi-million dollar settlement for all insureds whose claims were not paid by the insurance carrier.

23. *Benjamin v. Chicago Sun Times.* (Circuit Court of Cook County, Illinois). Stock Market misrepresentation and quotation errors. Larry D. Drury was lead counsel and achieved several million dollars in nationwide class relief, as well as significant remedial relief.

24. *Gore v. Bally Total Fitness* (Circuit Court of Cook County, Illinois). Larry D. Drury was lead counsel in this breach of contract and consumer fraud case involving membership fees. The settlement provided refunds to the class and advertising changes as to the Defendant's nationwide membership renewals.

25. *Kousins v. Continental Bank of Illinois* (Circuit Court of Cook County, Illinois). Larry D. Drury, as lead counsel successfully challenged the Bank's "float" and "hold" on depositors' checks. This case was one of the first legal challenges to the "float" which ultimately led to the enactment of the Federal Funds Availability Act. The class received hundreds of thousands of dollars in refunds with respect to the "float" and "hold" money retained by the Defendant.

Larry D. Drury, Ltd. is currently counsel in over 20 pending state and nationwide class action cases. The pending cases include, but not limited to claims of anti-trust, breach of contract, breach of warranty, consumer fraud, unjust enrichment and declaratory and injunctive relief. Larry D. Drury, Ltd. has been appointed as Co-Interim Class Counsel in the cases set forth below:

26. *In Re A Million Little Pieces Litigation.* MDL No. 1771, United States District Court for the Southern District of New York. Larry D. Drury is appointed co-class counsel in this nationwide MDL consumer fraud case concerning the James Frey book, *A Million Little Pieces*, sold as a memoir when it was fiction.

27. *In Re McDonalds' French Fry Litigation.* Case No. 06 C 1439 - MDL No. 1784, United States District Court for the Northern District of Illinois. Larry D. Drury is appointed as co-interim class counsel in this nationwide MDL consumer fraud case concerning gluten in McDonalds' french fries and hash browns.